

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

In re PHILLIP O. EMIABATA,

Appellant,

V.₂

**SPECIALIZED LOAN SERVICING,
LLC. and AVAIL 1 LLC.**

Appellees.

CASE NO. C17-1752MJP

**ORDER REOPENING CASE AND
DIRECTING APPELLANT TO
FILE STATEMENT OF ISSUES
ON APPEAL**

On July 9, 2018, this Court, believing that Appellant had failed to respond to an Order to Show Cause, dismissed this matter without prejudice. (Dkt. No. 34.) It later became apparent that Appellant had indeed responded to the Order to Show Cause and, through no fault of Appellant's, his response had not been docketed.

In the period since that oversight, Appellant has filed a series of motions; to wit:

- A Motion for Leave to Proceed In Forma Pauperis (Dkt. No. 43) and a Second Amended Motion for Leave to Proceed In Forma Pauperis (Dkt. No. 46)
 - A Motion to Vacate Order (Dkt. No. 37)
 - A Motion to Show Cause (Dkt. No. 38)

- 1 • A Motion of Statement of Issues on Appeal (Dkt. No. 39) with an accompanying
2 Declaration of Appellant (Dkt. No. 40)
3 Appellant's Motion for Leave to Proceed in Forma Pauperis was granted by Magistrate
4 Judge Theiler on September 18, 2018. (Dkt. No. 48.) With the granting of that motion, this
5 Court is prepared to reopen Appellant's litigation and hopefully see it through to its conclusion.
6 However, there is one more procedural requirement that must be met in order for Appellant's
7 matter to proceed.

8 Appellant is required to file, pursuant to Federal Bankruptcy Rule 8009(a)(1), a
9 “statement of issues on appeal.” A statement of issues on appeal is exactly what it sounds like: a
10 summary of the issues which form the basis of the appeal from the Bankruptcy Court; put
11 another way, it is a statement of what the appellant thinks the Bankruptcy Court did wrong.
12 Such a statement must be filed with this Court before this case can move forward.

13 In the packet of motions Appellant filed in the wake of the July 2018 dismissal of his
14 matter was one entitled “Appellant Motion for Its Statement of Issue in Its Appeal.” (Dkt. No.
15 39.) It appears to be a summary of the various cases Appellant has filed in both the Western
16 District of Washington and the Western District of Texas; it is not a “statement of issues on
17 appeal” and it will not satisfy the requirement which Appellant must meet in order for his case to
18 proceed.

19 To assist the Appellant in filing a proper statement of issues on appeal, the Court is
20 attaching a form for the filing of a statement of issues on appeal. (*See* Attachment A.) It is
21 hoped that this will make clearer to the Appellant what he needs to include in his statement of
22 issues on appeal. If he will fill out that document properly and file it with the Court, then this
23 matter can proceed forward to resolution. The Court is giving Appellant 28 days from the date
24 of this order to file the statement of issues on appeal.

25 The Court wishes to address one other point on which Appellant appears to be confused.
26 Prior to the referral of his appeal from the Bankruptcy Court to this Court, Appellant had filed a
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1 “Complaint and Request for Injunction” which was assigned to the Honorable James L. Robart
2 of this district. (*See* C17-1302JLR.) That matter was dismissed on October 3, 2017. (*Id.*, Dkt.
3 No. 7.) Appellant did not appeal the dismissal. It appears from some of Appellant’s pleadings in
4 this matter as though he believes either (1) he can consolidate his dismissed matter (C17-
5 1302JLR) with the case pending before this Court or (2) he can re-file the complaint from C17-
6 1302JLR in this case. He needs to understand that he can do neither.

7 The only issues before this Court are those arising out of the Bankruptcy Court
8 proceedings from which Appellant appealed (involving the lifting of an automatic stay of lien
9 enforcement awarded to moving party Specialized Loan Servicing by Bankruptcy Judge Dore on
10 October 20, 2017). Appellant’s case before Judge Robart has been dismissed and (no appeal to
the Ninth Circuit having been taken) is completely concluded.

11 The Court hopes this clears up any remaining questions and that, once Appellant files his
12 Statement of Issues on Appeal, this matter can move forward to a resolution on its merits.
13 Therefore,

14 IT IS ORDERED that the dismissal entered on July 9, 2018 is VACATED and this matter
is re-opened.

15 IT IS FURTHER ORDERED that Appellant will file a Statement of Issues with this
16 Court by no later than **October 22, 2018**; Appellant is directed to Attachment “A” of this order
17 for a suggested format for that statement.

18 IT IS FURTHER ORDERED that any pleadings currently on the docket which are
19 designated as “motions” by Appellant are stricken; the Court believes it has addressed all matters
20 raised by Appellant in the wake of the July dismissal.

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The clerk is ordered to provide copies of this order to Appellant and to all counsel.

Dated this 24th day of September, 2018.

Wesley F. Releman

The Honorable Marsha J. Pechman
United States Senior District Court Judge